

Midland Transportation Company, Inc. and Teamsters Local Union No. 238, International Brotherhood of Teamsters, AFL-CIO.¹ Cases 18-CA-11218 and 18-RC-14755

November 6, 1992

SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On August 12, 1991, the National Labor Relations Board issued its Decision and Order² finding that the Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act. Specifically, the Board found that the Respondent violated Section 8(a)(3) and (1) by suspending employee Walter and by discharging employee Phillips. The Board further found that the Respondent violated Section 8(a)(1) by: (1) distributing an overly broad no-solicitation rule in November 1989, and thereafter maintaining that rule; (2) distributing overly broad and discriminatory rules against union activity on and after February 26, 1990, and thereafter maintaining those rules; (3) coercively interrogating employees on January 7 and 13 and February 22, 1990; (4) coercively interrogating a former employee on February 22, 1990; (5) threatening an employee with job loss; and (6) threatening to close the terminal. In addition, the Board set aside the election in Case 18-RC-14755 and directed a second election.

The Respondent filed a petition for review with the United States Court of Appeals for the Eighth Circuit. The General Counsel cross-petitioned the court for enforcement of the Board's Decision and Order. On May 5, 1992, the court enforced the Board's Order in all respects except as to the February 22 interrogation and suspension of employee Walter, and as to the February 26 rules.³ The court remanded the case to the Board for modification of its Order in accordance with the court's opinion.

On September 21, 1992, the Board advised the parties that it had accepted the remand and invited statements of position. Thereafter, the General Counsel and the Charging Party filed position statements.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

We have considered the original decision in light of the court's holding, and the General Counsel's and Charging Party's statements of position. We accept the court's decision as the law of the case and, pursuant to the court's remand, substitute the following Order

and notice for those in the original Decision and Order. Additionally, as requested in the statements of position, we remand Case 18-RC-14755 to the Regional Director to conduct a second election. Thus, although the court modified the original Decision and Order in certain respects, it enforced the Board's finding that the Respondent distributed an overly broad no-solicitation rule in November 1989, and thereafter maintained it. As the Respondent maintained this no-solicitation rule throughout the critical period between the filing of the petition in Case 18-RC-14755 and the April 3-4, 1990 election, we agree with the General Counsel and Charging Party that a second election is warranted. *Baldor Electric Co.*, 245 NLRB 614, 615 (1979); *Automated Products*, 242 NLRB 424, 429 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Midland Transportation Company, Inc., Marshalltown and Spencer, Iowa, and other terminal locations in Iowa, Minnesota, and Nebraska, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating, maintaining, or enforcing any rule that restricts employee union activities during employees' free time.

(b) Coercively interrogating employees concerning their union activities or those of other employees, or how they intend to vote in a union election.

(c) Asking employees to report back on the future union activities of other employees.

(d) Threatening employees that, if they try to get a union in, it will shut down and reopen under another name.

(e) Threatening employees, directly or by implication, that they face a loss of jobs should they bring in a union.

(f) Discharging or otherwise discriminating against employees because of their union sympathies or activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights protected by the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the no-solicitation rule contained in the Employee Handbook distributed in November 1989, and advise your employees in writing that this has been done.

(b) Offer Mark Phillips immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges; and make him whole for any loss of earnings and benefits suffered as a result of the discrimination against him.

¹ The name of the Charging Party has been changed to reflect the new official name of the International Union.

² 304 NLRB 4.

³ *Midland Transportation v. NLRB*, 962 F.2d 1323 (1992).

(c) Remove from its files any references to the unlawful discharge of Phillips, and notify him in writing that this has been done and that this discharge will not be basis for future personnel or disciplinary action against him.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post copies of the attached notice marked "Appendix." Copies of the notice on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that Case 18-RC-14755 is severed and remanded to the Regional Director for Region 18 to conduct a second election as directed below.

[Direction of Second Election omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT promulgate, maintain, or enforce any rule which restricts employee union activities during the employees' free time.

WE WILL NOT coercively interrogate employees concerning their union activities or those of other employees.

WE WILL NOT ask employees to report back on the future union activities of other employees.

WE WILL NOT threaten employees that, if they try to get a union in, we will shut down and reopen under another name.

WE WILL NOT threaten employees, directly or by implication, that they face a job loss should they bring in a union.

WE WILL NOT discharge or otherwise discriminate against employees because of their union sympathies or activities.

WE WILL rescind the no-solicitation rule contained in the Employee Handbook we distributed in November 1989, and WE WILL advise our employees in writing that this has been done.

WE WILL offer Mark Phillips immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges, and WE WILL make him whole for any loss of earnings and benefits suffered as a result of the discrimination against him, with interest.

WE WILL remove from our files any reference to the unlawful discharge of Mark Phillips and notify him in writing that this has been done and that evidence of the unlawful discharge will not be used as a basis for future personnel or disciplinary action against him.

MIDLAND TRANSPORTATION COMPANY,
INC.